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In the

Supreme Court of the United States

October Term, 1974

No. 74-308

Clarence Riley, Nellie Gaughran, James Stith, Annie Smith, Allean Gardner, William Davis, William Banks, Charles Turner, Ella Gergory, Ethel Banks, Ula Keeler and Vernie Turner,

Petitioners,

against

Reverend James H. Howell, John Overbey, Horace Jones, Manuel Manning, Tom Bennett, Melvin Martin and Myron Price,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

Respondents, Rev. James H. Howell, John Overbey, Horace Jones, Manuel Manning, Tom Bennett, Melvin Martin and Myron Price, respectfully pray this Court to deny the Petition for a Writ of Certiorari to the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, to review the judgment of that court affirming a judgment of a Special Term, Part III, of the Supreme Court of the State of New York, County of Westchester, in favor of respondents.

Statement of the Cases

Rev. James H. Howell, a respondent herein, was called on March 14, 1970, to the pastorate of the Bethesda Baptist Church of Port Chester, New York, and assumed his post thereat in August, 1970. The record is devoid of any complaint that he did not satisfactorily perform his ministerial duties at his new parish. At this date, he is still functioning as the pastor of said church.

Petitioners, constituting a dissident minority of the church, met prior to July 20, 1972, and planned to discharge Rev. Howell. At the meeting of the Board of Deacons held on July 20, 1972, one James Keeler made a motion to terminate the pastor's services without the presentation of any charges. After discussion, the motion was overruled.

Petitioners then caused a Notice of Meeting for August 14, 1972,* to be mailed to the congregation without the authorization of the Board of Deacons and in the absence of any authority from that body delegating its duty and function to summons the spiritual body. Prior to and subsequent to the meeting of July 20, 1972, petitioners chose petitioner Clarence Riley as temporary chairman to preside at the anticipated August meeting of the spiritual body, and formulated rules and regulations which were to govern the proceedings. Not only was the authority and function of the Board of Deacons usurped in contravention of Baptist custom, practice and tradition, but also the mailing of the notice and the selection of petitioner Riley as temporary chairman was in violation thereof.

All of the persons selected to officiate at the meeting of August 28, 1972, were opposed to Rev. Howell. It was re-

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* The meeting was later adjourned to August 28, 1972.

iterated at that meeting that there were no charges pending against the pastor. Respondents and their supporters were completely ignored at the meeting, which in essence was tantamount to a "rump" session. The trial court found that the constitution and/or by-laws of the Bethesda Baptist Church had been duly adopted and that a quorum was not present according to the provisions thereof.

Petitioners contend in their Statement of the Case that the trial court decreed that, among other things, "petitioners would be enjoined forever from in any way interfering with Reverend Howell in his position as pastor of the church." Petition at p. 5. Not only does the word "forever" not appear in the said judgment, Petition at pp. 15-17, but the Appellate Division, Second Department, specifically held that the decretal paragraph in question could not be so construed. In its words:

> We do not construe the fifth decretal paragraph in the judgment as restraining plaintiffs, in any manner, from taking *further proper procedures* for the termination of the employment of the defendant reverend, if they be so advised.
>
> (Petition at p. 14, emphasis added.)

On May 1, 1973, the trial court rendered its judgment enjoining petitioners from interfering with respondent Howell in his capacity as pastor.* On November 13, 1973, the Appellate Division entered its decision unanimously affirming the judgment of the Civil Court, and, on January 14, 1974, entered its order of affirmance. On June 5, 1974,

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* Although petitioners commenced an injunctive proceeding in the trial court to restrain respondents from interfering with the August 14, 1973, membership meeting, they eventually discontinued this action and the issues at trial were limited to those contained in petitioners' counterclaims and the reply thereto.

the Court of Appeals of the State of New York denied petitioners' motion to appeal therefrom and this Petition for a Writ of Certiorari was docketed in this Court on September 25, 1974.

Question Presented

1. Whether petitioners have failed, neglected or refused to utilize the due process procedures available to them and requisite for the discharge of respondent Howell as Pastor of the Bethesda Baptist Church of Port Chester, N. Y.?

Reasons for Not Granting the Writ

The Granting of the Writ Would Be Improper Under the Circumstances of This Case, Because the Record Below Does Not Support or Relate to the Questions Presented by the Petition for Writ of Certiorari.

The issue posed by petitioners—namely, that "the First Amendment prohibits a court from interpreting religious doctrine to impose upon a church a minister whom it has discharged," Petition at p. 5, simply does not exist. Petitioners, in order to create a straw man, have misleadingly stated that "the trial court installed Reverend Howell as the permanent pastor of the Bethesda Baptist Church contrary to the will of the majority of its members," *id.*, when, in point of fact, its principal finding was that the proceeding to discharge the pastor "was defective in its inception." *Id.* at p. 23. What the trial court really decided was that (1) a Baptist pastor "may not be dismissed without charges of specific misconduct," *id.*, (2) the validly adopted constitution of the Church provided for a quorum of "three-fourths (¾) of the Congrega-

tion . . . to dismiss a pastor," *id.* at 25, and (3) Rev. Howell was dismissed "without charges of specific misconduct" and in the absence of proof of the presence of the requisite quorum. Petition at pp. 18-28.

Petitioners insist that what occurred in the trial court was the resolution of a religious or ecclesiastical controversy which they claim violates the Establishment Clause of the First Amendment. In support of this thesis, they cite *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hill Memorial Presbyterian Church*, 393 U.S. 440 (1969); *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94 (1952); and *Gonzalez* v. *Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929). None of these cases is applicable to the facts and circumstances here present.

In *Presbyterian Church, supra*, this Court held that civil courts could not decide church property disputes by "resolving underlying controversies over religious doctrine." 393 U.S. at 449. In that case, the dispute between petitioner, the general church and two local Presbyterian churches in Savannah, Georgia, revolved around a jury determination as to whether the actions of the general church amounted "to a fundamental or substantial abandonment of the original tenets and doctrines" thereof. *Id.* at 443-4. In reversing and remanding, this Court held that civil courts could not resolve church property disputes by determining "ecclesiastical questions." *Id.* at 446. See also *Watson* v. *Jones*, 13 Wall 679 (1872).

Obviously, this case does not involve either a property dispute or an "ecclesiastical question." Moreover, in *Presbyterian Church*, this Court cited with favor *Kedroff* v. *St. Nicholas Cathedral, supra*, in which it was emphasized that

> [F]reedom to select the clergy, *where no improper methods of choice are proven,* we think, must now be said to have a federal constitutional protection as part of the free exercise of religion against state interference. 393 U.S. at 448, emphasis added.

Parenthetically, *Kedroff* involved the determination of the constitutionality of a New York statute, Art. 5-C, Religious Corporations Law, which purported to transfer control of New York churches of the Russian Orthodox religion from the central governing hierarchy of the Russian Orthodox Church, the Patriarch of Moscow and the Holy Synod to the governing authorities of the Russian Church in America. Patently, no comparable or analagous question is here present.

As indicated above, this Court has expressly held that, with respect to the selection of clergy, the civil courts are free to determine whether "improper methods of choice are proven. . . ." 334 U.S. at 116. In *Gonzalez* v. *Roman Catholic Archbishop of Manila, supra,* it was specifically stated that

> [I]n the absence of fraud, collusion or arbitrariness, the decision of the proper church tribunals on matters purely ecclesiastical . . . are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise. 280 U.S. at 16.

The precise issue before the trial court, whose jurisdiction had been initially invoked by petitioners, was whether "improper methods" or "fraud, collusion or arbitrariness" had been involved in dismissing respondent Howell.* This

* As the trial judge put it, "[T]he Court finds, on the evidence, that a quorum was not present, and that the resolution [of dismissal] was therefore a nullity." Petition at p. 28.

is precisely the type of issue that is open for decision by the secular courts, particularly where, as here, there are no ecclesiastical tribunals to do so.

From the trial court's opinion, Petition at pp. 18-28, it does not appear that the First Amendment issue here presented was ever raised below.* 393 U.S. at 444, n. 3. However, even if so raised, it is clearly irrelevant to the questions presented to and decided by the trial court. The latter did not resolve "underlying controversies over religious doctrine," 393 U.S. at 449, but merely a non-ecclesiastical question as to whether established and proper due process procedures had been adhered to in discharging a pastor, a wholly valid concern of the civil courts. *Russian Church of Our Lady of Kazan* v. *Dunkel*, 33 N.Y.2d 456 (1974); *Rector, Church of Holy Trinity* v. *Melish*, 4 A.D.2d 256 (1957), aff'd 3 N.Y.2d 476 (1957).

The standards applied by the trial court in reaching its conclusion were beyond cavil "neutral principles of law . . . which can be applied without 'establishing' churches. . . ." 393 U.S. at 449. If the secular courts were not available to apply such principles in appropriate cases, serious internal disputes, as the one involved below, would be incapable of resolution. This is particularly so when, as here, we are dealing with a congregational rather than a hierarchial church in which, as petitioners concede, "the highest authoritative tribunal would be the decision of the congregation itself". Petition at p. 7. The trial court was concerned only with whether "the decision of the congregation itself" was legitimately reached. For reasons fully set forth in its exhaustive opinion, it found that it was not.

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* Counsel for respondents has been assured by their state court attorney that this issue was not raised by petitioners in their pleadings below.

Thus, petitioners were left with a ready avenue for further proceedings. As the Appellate Division put it, they could take "further proper procedures for the termination of the defendant reverend," Petition at p. 14, a course they chose not to pursue. Instead, they have elected to petition this Court for Writ of Certiorari by raising a non-existant and/or inapplicable constitutional issue.

CONCLUSION

The Petition for a Writ of Certiorari should, therefore, be denied.

Respectfully submitted,

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Dated: New York N.Y.
October 16, 1974